

11.5.1 052 0520
2/13/89

REED & GIESA, P.S.

D. ROGER REED
JOHN P. GIESA
JAMES A. MCDEVITT
THOMAS A. WOLF
MICHAEL J. CASEY
TIMOTHY J. GIESA
MARK E. LEHINGER
RANDAL S. THIEL

ATTORNEYS AT LAW
410 GREAT NORTHWEST BUILDING
222 NORTH WALL STREET
SPOKANE, WASHINGTON 99201
TELEPHONE (509) 838-8341
TELECOPIER (509) 838-6341

IDAHO OFFICE:
HARBOR CENTER SUITE 100
1000 WEST HUBBARD
P.O. BOX 847
COEUR D'ALENE, IDAHO 83814
(208) 667-0683

*ADMITTED WASHINGTON & IDAHO

IN RE

RECEIVED

FEB 14 1989

CLERK OF COURT

COLBERT LANDFILL SITE

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,
and the UNITED STATES of
AMERICA on behalf of the
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Plaintiff,

v.

COUNTY OF SPOKANE and
KEY TRONIC CORPORATION,

Defendants.

COMMENTS

ON

CONSENT DECREE

TO: Jim Nicoll
Land and Natural Resources Division
U. S. Department of Justice
10th and Constitution Avenue
Washington, D.C. 20530; and

TO: Mike Blum
Department of Ecology
Woodland Square Building
M.S. PV-11
Olympia, Washington 98504; and

TO: E.P.A. Region 10
Superfund Group - HW - 113
1200-Sixth Avenue
Seattle, Washington 98101

COMES NOW the Whitworth Water District No. 2, a
municipal corporation, and submits its comments to the proposed
Consent Decree as follows:

COMMENTS ON
CONSENT DECREE 1

USEPA SF



1481708

1. Identity of Party Submitting Comments.

Whitworth Water District No. 2 (the "District") is a municipal corporation, organized and operating pursuant to Title 57 R.C.W., in Spokane County, State of Washington.

2. Address of Party Submitting Comments and Representative of Party.

Whitworth Water District No. 2
N. 10828 Waikiki Road
Spokane, Washington 99218
Attn; Susan Eldore, Administrator
509/466-0550

James A. McDevitt
Attorney at Law
Reed & Giesa, P.S.
North 222 Wall, Suite #410
Spokane, Washington 99201
509/838-8341

3. Subject of Comments.

Comments contained herein are submitted with respect to that certain Consent Decree lodged in United States District Court, Eastern District of Washington, on January 9, 1989, and titled as follows:

The State of Washington, Department of Ecology and the United States of America on behalf of the U.S. Environmental Protection Agency, Plaintiff, v. County of Spokane and Key Tronic Corporation, Defendants, U.S.D.C., E.D.Wash No. C-89-033-RJM.

These comments are submitted pursuant to 28 CFR § 50.7, §122 of CERCLA, 42 U.S.C. § 9622, RCW 70.105B.070(5), and WAC 173-340-040(7).

4. General Background.

The District is a municipal water system situate in Spokane County, Washington. The District currently provides municipal water service to over 6000 customers in the North Spokane and Colbert area. Most, if not all, of the area impacted by the Colbert Landfill is within the current political boundaries of the District, as well as within the District's existing and future service areas. The District is governed by Title 57 R.C.W., and its systems and operations must comply with all federal, state and local requirements, as well as its own rules and regulations which govern a public water system.

5. General Objection.

The proposed Consent Decree, as written, does not implement the record of decision, nor does it satisfactorily implement one of its principal objectives - - the satisfactory provision of an alternative supply of domestic water.

(a) Record of Decision.

The Record of Decision (ROD) entered in this matter clearly stated that a major element of the remedy sought in this cleanup was to :

"provide an alternative water supply system to any residents deprived of their domestic supply due to demonstrated contamination from the landfill or due to the action of the extraction or interception systems."
(ROD, P. 2).

The proposed Consent Decree does not satisfactorily implement this remedy for the specific reason set forth herein.

(b) Proposed Consent Decree.

The proposed Consent Decree (CD) clearly sets forth as the principal component of the Remedial Action (RA) the:

"1. Provision of an alternate drinking water supply to each residence whose domestic water supply is affected by Constituents of Concern or by the Remedial Action.

. . . " (CD, P. 16)

The Scope of Work (CD, App. B) does not satisfactorily implement this desired objective, is deficient in many respects and leaves too many unresolved issues and questions, all as will be noted in the specific comments noted herein.

For the reasons noted herein the District submits that the portion of the Consent Decree and attached Scope of Work which relates to the provision of an Alternate Water Supply is inconsistent with the Record of Decision in this matter, contrary to law and counter to sound water utility planning principles. For these reasons the remedy as proposed is inappropriate for the area, improper under the circumstances and inadequate with respect to the provision of public water services to the area affected.

6. Specific Comments.

(a) Alternative Water Supply. The proposed Consent Decree is inconsistent with the Record of Decision.

The Record of Decision provided that:

(i) Residents deprived of their domestic supply of water by virtue of demonstrated contamination or due to the action of the extraction systems will be connected to an adequate supply of safe water for domestic use (ROD, P.2 and 3);

(ii) Provider of such an adequate supply of water shall be the Colbert Extension of the Whitworth Water District system (ROD, P. 3);

(iii) By virtue of the increased requirements for domestic water, the present system (Colbert Extension) may require upgrading in order to provide an adequate supply of water (ROD, P. 3); and

(iv) The improvements to the Colbert Extension shall be designed (and built) to meet State Public Water System Standards (ROD, P. 3) to assure an adequate supply of water to all residents of the area who may require an alternative water supply.

These same laudable goals (in the form of a remedy) are not echoed in the proposed Consent Decree, and in fact, are substantially different to the point of confusion and potential degradation of the domestic supply of water to be provided.

With respect to the provision of an Alternate Water Supply, the proposed Consent Decree provides:

(i) If contaminants are found and confirmed in any well existing at the time of entry of the Consent Decree, the County will provide an alternate drinking water source, which may be at the County's discretion; (a) bottled water (interim), (b) connection to the Whitworth system, or (c) connection to an approved Class IV System (CD, App B, VIII-1);

(ii) The County is only responsible for the provision of a drinking water supply in an amount equal to the lesser of the Department of Social and Health Services (DSHS) Standards or annual average well production (CD, App B, VIII-1);

(iii) If the operation of the extraction system impacts well yields for wells in use prior to entry of the Consent Decree, and water supplies are below the lesser of volume by water right or average daily well capacity, one of the options available to the County is to provide an alternative water supply

(bottled water, connection to Whitworth System, or connection to an approved Class IV System) (CD. App. B, VIII-2);

(iv) The County is not responsible for any costs in excess of these necessary to provide the lesser amount of drinking water as set forth above (CD, App. B, VIII-2); and

(v) The County is not responsible for any costs of fire flow, storage requirements or over-sizing in excess of the provision of minimal drinking water requirements.

The differences between the remedy noted in the Record of Decision and that to be implemented by the Consent Decree are readily apparent.

(b) Designation of Source of Water Supply. Within the service area boundaries of the District the County may not initiate, designate or approve any other public water systems.

As one of its options the County seems to have given itself the authority to provide residents with an alternate supply of domestic water by means of an approved Class IV system.

The entire area currently effected by the Colbert Landfill, with minor exceptions, is within the current boundaries of Whitworth Water District's Critical Water Supply Service Area. (CWSSA).

The Public Water Supply Coordination Act of 1977 (The Act), Ch. 70.116 RCW, was enacted to safeguard our state's finite supply of potable water used for domestic, commercial, and industrial use. Due to the limited supplies of readily available potable water, the legislature felt it necessary to provide a method whereby potable water would be developed and used with a minimum of loss or waste. In furtherance of this goal DSHS was tasked with the responsibility of coordinating and controlling the planning, growth and proliferation of public water supply systems. RCW 70.116.010.

A "public water system" is any water system which provides water to more than a single family residence (unless existent prior to September 21, 1977 and serving less than ten residences). RCW 70.116.030 (3). A Class IV water system is a public water system. WAC 248-54-015(2)(d) & (19).

Consistent with the current Coordinated Water System Plan (CWSP) most, if not all, of the wells affected in the Colbert Landfill area lie within the external boundaries of the District's Critical Water Supply Service Area (CWSSA). R.C.W. 70.116.030 (1) & (2). In short, the area in question has been designated as within either the existing or designated future service area of the District.

COMMENTS ON
CONSENT DECREE 5

wells can still be used for other purposes

With respect to the proliferation of other public water systems, Class IV or otherwise, within the current or future service areas of the District, RCW 70.116.040(1) clearly mandates:

"After establishment of the external boundaries of the critical water supply service area, no new public water system, may be approved within the boundary area unless an existing water purveyor is unable to provide service." (Emphasis supplied).

Thus, the County's plan to provide an alternative source of water in the affected area by means of an approved Class IV System is contrary to Ch. 70.116 RCW. There is no indication that the existing water purveyor (The District) is unable to provide service. It is unlikely that the District (or DSHS) will approve of the proliferation of one or many small purveyors within the existing CWSSA of the District. Finally, it is contrary to sound water utility planning, as well as the Public Water System Coordination Act, to allow or encourage the proliferation and growth of small and/or inadequate public water supply systems.

The District is not alone with respect to such concerns. In that regard, find attached as Exhibit "A" a letter from Dan Sander, DSHS to Mike Blum, DOE, wherein Mr. Sander, in his capacity as Section Head, Eastern Water Operations Section, voices the same concerns. It should be noted that the final Scope of Work on this subject has not materially changed from the draft Scope of Work to which Mr. Sanders addresses his comments.

(c) Provision of An Adequate Supply of Water. The Consent Decree does not currently provide for an adequate supply of potable water for domestic use.

The Record of Decision mandated the provision of an "adequate supply" of potable water for in-home domestic use (ROD, P. 3). The proposed Consent Decree provides for what the District would term "a trickle effect," i.e., the lesser of DSHS standards or the individual's current well production, whatever that may be. (CD, App. B, P. VIII-1).

The District is not practically or legally able to provide "a trickle" of water to its customers. As a municipal public water purveyor the District is obligated to provide water in accordance with federal, state, county and district standards as related to source, treatment, storage, capacity, quality, quantity and fire flow. The Record of Decision mandated compliance with Ch. 248-52 WAC, Public Water Supplies. In that regard the District must construct, operate, and maintain its public water system to the highest standards required by DSHS and

*allow for the
upgrade of
existing
wells
not in
district*

consistent with the public health, safety and welfare.

By definition the District is a Class I System and must comply with Class I standards. The District cannot construct, own, or maintain a Class IV System. There are many substantial differences too numerous to mention herein. By way of example, however, the minimum distribution main line size in a Class I System is six (6) inches and distribution lines smaller than two (2) inches are unacceptable. In Class IV Systems, however, main lines and distribution lines may be much smaller (WAC 248-54-135(4)).

Again, these same concerns with respect to compliance with state public water supply and fire flow regulations are shared by DSHS (see Exhibit "A").

It appears that the County, by virtue of the proposed Scope of Work, is satisfied with the provision of a "trickle" of water. The District, however, is not in the business of supplying a public water source which is in not full compliance with all applicable statutes and regulations.

(d) Division of Responsibility For costs of Water Services. The proposed Consent Decree is totally inadequate with respect to any division of responsibility between Alternate Water Supply costs to be borne by the County and those to be borne by the District or its customers.

The Record of Decision mandated the provision of an "adequate supply" of potable water to residents whose wells show demonstrated contamination or were impacted by operation of the extraction systems. (ROD, P. 3).

During the February 8, 1989, public meeting held regarding the Consent Decree, Mr. Blum from the Department of Ecology continually referred to the provision of an Alternate Water Supply as one which would be provided "free of charge" or as a "fee hookup to a clean water supply." He repeatedly stated that residents who qualified would be "offered a free hookup."

Either Mr. Blum is unaware of the language and effect of the Scope of Work as it relates to provision of an Alternate Water Supply, or he is not familiar with the legal requirements placed upon a public water system such as the District.

In the Scope of Work the County disclaims responsibility for costs in excess of those to provide residents with a "trickle" of water. Specifically, the County disclaims responsibility for any costs relative to fire flow, storage requirements, or oversizing. No rationale, plan or formula is offered as a means of either justifying such a position or delineating responsibility for such costs even if the District

were willing to accept such a plan. When queried on this, Mr. Blum's response was that the division of responsibility for costs would "just have to be worked out" in the future between the District and the County.

The District submits that it is rather naive (to the point of irresponsibility) to leave such a major financial factor open at this time and assume that the details of such a major consideration in the provision of an Alternate Water Supply will be "worked out in the future."

As stated above, the District is obligated to provide its users with a public water system which complies with all applicable codes and regulations, including fire flow, storage, transmission, etc. To advise residents that they will be provided with "a free hookup to a clean water supply" is, at minimum, totally misleading. It ignores the reality that a source of public water must be provided which is in full compliance with the law and which will cost more than the "trickle" proposed by the County. What is proposed as "free of charge" by DOE will be expensive to someone and the District submits that neither it, nor its customers, will pay for a system necessitated by a problem which was not its making.

(e) Lack of Participation in the Consent Decree Process. The District, in spite of numerous requests, has been excluded from any participation in the Consent Decree negotiations and design of the Scope of Work.

It is not surprising that the proposed Consent Decree and its attached Scope of Work are defective in those respects set forth above. In that the provision of an Alternate Water Supply was a material element of the Remedial Action, one would assume that the District, as principal provider of such Alternate Water Supply, would be, at least minimally, involved in some part of the drafting of the Scope of Work, especially with respect to services which it would ultimately be called upon to provide. Such, however, was hardly the case.

Since early in 1986 the District, by means of multiple letters and personal contacts, requested the opportunity for at least minimal involvement in the drafting of the Scope of Work as well as the opportunity to make the District's position and requirements known as related to its role as potential provider of the Alternate Water Supply. The District's many requests for involvement in the process continued through 1987 and 1988. Correspondence too numerous to affix hereto was directed at the Department of Ecology, the Environmental Protection Agency, and the County. The result was complete frustration.

In one response from the DOE (copy attached as Exhibit "B") Mr. Blum apologizes for DOE's delayed response and attempts

to advise the District of the status of negotiations. It is noteworthy that in his letter Mr. Blum advises the District that:

"In summary, no decisions will be made during the Consent Decree negotiations which would bind the Whitworth Water District to do work without reimbursement." (Exhibit "B", P. 2).

The current conflict between the proposed Scope of Work, the DOE's assertion of "free hookup to clean water supply", and the District's responsibility to design, construct and maintain a public water system in full compliance with the law does not support Mr. Blum's statement.

In short, the District has not been afforded the opportunity to participate in the process of drafting the proposed Scope of Work. The conflicts, problems, and shortfalls noted herein are symptomatic of the lack of valuable input from the District.

7. Conclusion.

For the reasons set forth above, the District submits that the proposed Consent Decree and accompanying Scope of Work is wholly inadequate with respect to provision of the Alternate Water Supply.

The remedy proposed is inconsistent with the Record of Decision. The provisions of the Scope of Work as relates to the provision of an Alternate Water Supply are inappropriate for the area, legally improper and wholly inadequate. Thus, such facts and circumstances having been properly presented, it is appropriate that the Department of Justice withhold approval of the Consent Decree until these defects are remedied and that the Court withhold approval of the Consent Decree as currently proposed.

Respectfully Submitted
this 13 day of February, 1989

Reed & Giesa, P.S.

By: 

JAMES A. MCDEVITT
Attorney for Whitworth Water
District No. 2

Approved for Submittal
Whitworth Water District No. 2

By: 

R. Edward MacDonald
Chairman, Board of Commissioners

JULE M. SUGARMAN
Secretary



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

West 924 Sinto Avenue, L32-4 • Spokane, Washington 99201-2595 • (509) 456-3115

August 24, 1988

Mike Blum, Project Manager
Hazardous Waste Cleanup Program
Department of Ecology
PV-11
Olympia, WA 98504-8711

RE: Colbert Landfill

Dear Mike,

As we discussed on the telephone recently, this office has had the opportunity to review the June 8, 1988 draft Scope of Work for the remedial action to address ground water contamination emanating from the Colbert Landfill in Spokane County.

We have concerns regarding Section VIII, Alternative Water Supply. This section, as written, does not encompass a number of regulations administered by this department. Specifically, WAC 248-56 (Water (System Coordination Act--Procedural Regulations) and WAC 248 57 Water System Coordination Act -- Fire Flow Regulations) have provisions that apply to any new or expanding public water supply in the Colbert Landfill area. In addition, Spokane County has adopted minimum fire flow standards and water supply standards as part of their Uniform Fire Code.

The Coordinated Water System Plan for Spokane County is currently being updated, and recommendations are being made for more stringent fire flow requirements. The provision of adequate fire flows is becoming an increasingly more important aspect of a public water system regardless of size in light of recent serious fires in "rural residential" areas, including a fire near the Colbert landfill last year.

I have enclosed copies of the above referenced WAC's and Uniform Fire Code and some pertinent information from the Coordinated Water System Plan update process. Please feel free to contact Tom Wells of this office or myself if you have any questions or if we can of of any assistance.

Sincerely,

Dan Sander, Section Head
Eastern Water Operations Section

Bcc: Jim McDevitt

ANDREA BEATTY RINKER
Director



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Mail Stop PV-11 • Olympia, Washington 98504-8711 • (206) 459-6000

April 8, 1988

Mr. Leo Hutchins, General Manager
Whitworth Water District No. 2
N. 10828 Waikiki
Spokane, WA 99218

Re: Colbert Landfill Cleanup and Alternate Water Supply

Dear Mr. Hutchins:

I am writing in response to the previous letters you sent to me. First, I would like to apologize for the delay in responding to your letters. Next, I would like to outline what has happened so far in the negotiations with the Potentially Responsible Parties (PRP's) and why you have not been invited and to those meetings. I will also try to explain how I think things will progress from here.

Our negotiation sessions are divided into two categories; legal and technical. The legal discussions center around development of the consent decree and the legal language to be included. Those discussions have been ongoing for the past three months and may continue until May 12, 1988. The most important issues (in my mind) center around the components of the cleanup itself. Those technical meetings, which I sent you a schedule of many weeks ago, have not been occurring as planned. We have met with the PRP's to discuss the past work done by Ecology (Remedial Investigation and Feasibility Study) as outlined on the schedule. All the other topics had been put on hold until the end of March. The PRP's, during the past month or more, have been writing a draft scope of work. Ecology and EPA have just recently received that draft for our review and comments.

During the interval while the Scope of Work was being drafted, I assumed the PRP's were going to meet with Whitworth W.D. and the Spokane County Air Pollution Control Authority (SCAPCA). My assumption was wrong. They did meet with SCAPCA, but they obviously have not met with you.

The requirements for cleanup of the Colbert Landfill site are defined in the Record of Decision (ROD) document. You have a copy of that document. The ROD says that an alternative water supply has to be provided to those residents whose water shows demonstrated contamination due to the landfill and/or whose water supply is reduced due to the groundwater interception and extraction wells. How that alternate water supply is provided is up to the party(s) completing the remedial action. There are no requirements in the current draft consent decree which will bind the Whitworth Water District to

Mr. Leo Hutchins

Page 2

April 8, 1988

complete any work, solely at the District's expense, without being compensated by the party(s) doing the cleanup.

The Governments are still negotiating with the PRP's about what level of contamination in a well would trigger a hookup. Will the criteria for hookup remain at the Maximum Contaminant Levels (MCL's) or will a new negotiated level be set? This issue has not been resolved yet.

My recommendation is that you should contact the current PRP's (Spokane County, Key Tronic Corp., and Fairchild Airforce Base) and set up a meeting to discuss what their plans are to fulfill the requirement of the Colbert ROD. For example, do the PRP's have some other plan to provide alternate water supplies other than connection to the Whitworth system? What do they project as the need for future hookups? Will expansion of the Whitworth system be needed to accommodate projected hookups due to the cleanup efforts? How does the District's current agreement with Spokane County and Key Tronic Corp., fit into the picture? I would attend this meeting if you feel it would be helpful.

In summary, no decisions will be made during the consent decree negotiations which would bind the Whitworth Water District to do work without reimbursement. After consent decree negotiations are complete and before a federal judge OK's the document (which will include the Scope of Work), those documents will be made available for public review and comment. At that time, if you feel the District will be adversely impacted by the planned remedial action (cleanup), you will be able to lodge your comments/complaints with the court. Again, I would also like to apologize for not responding to your past letters.

If you would like to discuss this matter further, please give me a call at (206) 438-3043 or write me at the address above. If you have legal questions, you can call Jeff Meyers, who is with the State Attorney General's Office representing Ecology in these negotiations. His telephone number is (206) 459-6184.

Sincerely,

Mike Blum

Mike Blum, Site Manager
Landfill Site Cleanup Section
Hazardous Waste Cleanup Operations

MB:sjm

cc: Jeff Meyers, AG's Office
Neil Thompson, EPA
Dennis Scott, Spokane County
Bruce Foreman, Key Tronic Corp.
Colonel Richard Wolf, Fairchild AFB